

BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

BARBARA MOSKAL,
Appellant,
v.
DEPARTMENT OF ECOLOGY,
Respondent.

) Case No. RIF 96-0014
)
) FINDINGS OF FACT, CONCLUSIONS OF
) LAW AND ORDER OF BOARD
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I. INTRODUCTION

1.1 **Hearing.** This appeal came on for hearing before the Personnel Appeals Board, HOWARD N. JORGENSEN, Chair, and WALTER T. HUBBARD, Member. The hearing was held at the office of the Personnel Appeals Board in Olympia, Washington, on November 25, 1998.

1.2 **Appearances.** Appellant Barbara Moskal was present and was represented by Michael Hanbey, Attorney at Law, Ditlevson, Rodgers & Hanbey, P.S. Respondent Department of Ecology was represented by Ann F. MacMurray, Assistant Attorney General.

1.3 **Nature of Appeal.** This is an appeal of whether Respondent complied with the applicable rules and procedures when reducing Appellant's position for a lack of funds.

1.4 **Citations Discussed.** WAC 356-30-330; Van Jepmond v. Employment Security Dep't, PAB No. L86-15 (1988), aff'd Thurston Co. Super. Ct. No. 88-2-00274-3 (1989); University of

1 Washington v. Harris, 24 Wn.App., 228, 230, 600 P.2d 653 (1979) rev. denied 93 Wn.2d 1013
2 (1980); Sinclair v. Dep't of General Administration, PAB No. L93-023 (1995).

3 4 **II. FINDINGS OF FACT**

5 2.1 Appellant Barbara Moskal is currently an Accountant 3 and permanent employee for
6 Respondent Department of Ecology (DOE) in the Administrative Services Division. Appellant and
7 Respondent are subject to Chapters 41.06 and 41.64 RCW and the rules promulgated thereunder,
8 Titles 356 and 358 WAC. Appellant filed a timely appeal with the Personnel Appeals Board on
9 July 22, 1996.

10
11 2.2 Appellant began her employment as an Accountant 4 at the Department of Ecology in 1979.
12 By letter dated June 12, 1996, Pat Lee, Assistant Director of the Administrative Services Division
13 of the Department of Ecology, notified Appellant of the reduction in force (RIF) of her position as
14 an Accountant 4 (position #0100). The letter stated a lack of funds as the reason for the elimination
15 of the position. Appellant was given a layoff option of Accountant 3 in the Administrative Services
16 Division, which she accepted. (Exh. R-6).

17
18 2.3 Appellant's position was organizationally assigned to the Administrative Services Division,
19 however, she had been performing auditing functions for the Water Division since 1979. In 1987,
20 the Water Division began to completely fund Appellant's position.

21
22 2.4 At the time of the RIF, Appellant's duties were in support for and her position was funded
23 by the Water Division. Appellant's duties consisted of auditing grant money awarded to local
24 government recipients for water quality programs.

1 2.5 Beginning 1993, the Department of Ecology, including its Water Division, began suffering
2 budget declines. For the 93-95 Biennium, the Water Division received a total of \$61.5 million, of
3 which \$29.94 million was allocated to the Sewage and Water Program and \$31.56 million was
4 allocated to the Water Quality Program. In addition, the Sewage and Water Program was allocated
5 205.4 Full Time Equivalents (FTE's) and the Water Quality was allocated 237.9 FTE's. (Exh. R-3
6 and R-4 and testimony of Jim Dannenmiller).

7
8 2.6 In early 1995, Appellant became aware that her position was at risk of being eliminated due
9 to the decrease in the Water Division's budget, however, funding Appellant's position was extended
10 through June 30, 1996. (Testimony of Appellant and Pat Lee).

11
12 2.7 In preparation for the 95-97 Budget, the Water Division requested that the Legislature
13 appropriate \$40.86 million and 239 Full Time Equivalents (FTE's) to the Sewage and Water
14 Program and \$28.29 million and 224.4 FTE's to the Water Quality Program. During the 1995
15 session, the Legislature approved a new biennial budget which appropriated the Sewage and Water
16 program \$27.02 million and 173.85 FTE's and the Water Quality program \$28.51 million and 210.4
17 FTE's for a total of \$55.53 million and 384.25 FTE's. (Testimony of Jim Dannenmiller and Exh.'s
18 R-3 and R-4).

19
20 2.8 In response to the decrease in Legislative appropriations, the Water Division began to look
21 at alternative ways to manage the decline in the budget and FTE numbers. The Water Division
22 reassessed its business processes and client service delivery program. As a result, policy changes
23 were implemented to reduce administrative costs. The Water Division concluded, in part, that it
24 could no longer afford to fund Appellant's position and determined that her auditing functions
25 would be eliminated. The Water Division ultimately eliminated funding for Appellant's position.
26 (Testimony of Jim Dannenmiller and Steve Carley).

1
2 2.9 More than one year prior to Appellant's RIF, three Accountant 4 positions in the
3 Administrative Services Division were allocated to Accounting Manager 1 positions. Appellant
4 was not notified of the reallocations.

5
6 2.10 WAC 356-10-030(7)(a) provides that "[e]mployees affected by agency initiated
7 reallocations shall be notified . . ."

8
9 2.11 Pat Lee, Assistant Director of the Administrative Services Division and Appellant's
10 appointing authority, made the determination that elimination of the Accountant 4 position #0100,
11 was appropriate based on the lack of funding which significantly decreased the budget for the
12 Department of Ecology's Water Division. Prior to eliminating the position, Mr. Lee met with the
13 agency's budget manager, reviewed budgetary data, and reviewed alternatives other than
14 elimination of the position. However, he concluded that the elimination of position No. 0100 was
15 necessary. (Testimony of Pat Lee).

16
17 2.12 The agency's reduction in force plan, Policy 1-50, #4, provides, in part, "Managers are
18 responsible for identifying functions that are appropriate for elimination, reduction or
19 reorganization, and for determining the organization of the work functions. . . ." (Exh. R-5).

20
21 2.13 WAC 356-30-330(1), provides in part, "Employees may be separated in accordance with the
22 statutes and the agencies' approved reduction in force procedures . . . because of lack of funds . . ."

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant's position was funded by the Water Division and that her auditing functions specifically served the Water Division's needs. Respondent contends that in 1993, the Department of Ecology, including the Water Division, began suffering budget dilemmas and that Appellant was aware that her position was at risk of being eliminated. Respondent contends that the Water Division received fewer funds from the Legislature than it requested and ultimately determined it could no longer fund Appellant's position. Respondent argues that it was within the department's discretion to reallocate three other Accounting 4 positions and denies that the reallocations were initiated to deny Appellant her bumping options. Respondent further argues that it had no requirement to notify Appellant of the impending reallocations because Appellant was not an incumbent in any of the three positions. Respondent argues that a legitimate lack of funds existed and that Appellant received the appropriate layoff options.

3.2 Appellant argues that the RIF of her position was implemented when no lack of funds existed. Appellant argues that her auditing activities recovered approximately \$800,000 in overpayments and more than justified retention of her position. Appellant further argues that the department inappropriately engaged in the reallocation of three other Accountant 4 positions to Accounting Managers, thereby eliminating viable bumping options for her. Appellant asserts she would have been eligible to consider the Accountant 4 positions as viable bumping options because of her seniority. Appellant further contends that she should have been notified when the decision was made to reallocate the positions since the reallocation affected her bumping options. Appellant asserts that no lack of funds existed, that she was not offered appropriate layoff options and asks that her appeal be granted.

IV. CONCLUSIONS OF LAW

4.1 The Personnel Appeals Board has jurisdiction over the parties hereto and the subject matter herein.

4.2 In an appeal of a layoff or reduction-in-force action, Respondent has the burden of proof. (WAC 358-30-170).

4.3 In instituting a RIF for lack of funds, agencies have discretion to determine in good faith which positions to eliminate. Van Jepmond v. Employment Security Dep't, PAB No. L86-15 (1988), aff'd Thurston Co. Super. Ct. No. 88-2-00274-3 (1989). The position to be eliminated and those to be retained when the budget is reduced is left to the good faith judgment of management. University of Washington v. Harris, 24 Wn.App., 228, 230, 600 P.2d 653 (1979) rev. denied 93 Wn.2d 1013 (1980). Respondent was within its right to review its existing programs and reduce staff as it deemed appropriate. Sinclair v. Dep't of General Administration, PAB No. L93-023 (1995).

4.4 The funding allocated to the Water Division was reduced and as a result the division was required to determine what steps to take in order to manage its program with the decline in funding. Mr. Lee appropriately used his discretion to eliminate the Accountant 4 position which resulted in abolishment of the position held by Appellant. Therefore, we conclude that Respondent has met its burden of proof that Appellant's position was reduced in force for a legitimate lack of funds. We find no evidence that the reallocations of the Accounting 4 positions were implemented to deny Appellant her bumping right or that Appellant was entitled to receive notification of the impending reallocations.

1 4.5 Respondent has met its burden of proof that the RIF of Appellant's position was necessitated
2 by a lack of funds and was completed in accordance with the requirements of WAC 356-30-330.
3 We continue to hold that management has the discretion to determine which positions to eliminate
4 and which budgets to reduce when faced with a demonstrated lack of funds. Therefore, the appeal
5 should be denied.

6
7 **V. ORDER**

8 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Barbara Moskal is denied.

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10 DATED this _____ day of _____, 1999.

11
12 WASHINGTON STATE PERSONNEL APPEALS BOARD

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14 _____
Howard N. Jorgenson, Chair

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16 _____
Walter T. Hubbard, Member